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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/928,058      | 08/08/2001  | Robert B. Seebeger   | 910.132             | 6939             |

27019 7590 09/06/2005

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| EXAMINER |
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HARMON, CHRISTOPHER R

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/928,058             | SEEBEGER ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Christopher R. Harmon  | 3721                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8,10-19,67-73 and 83-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-25 and 87 is/are allowed.
- 6) ☒ Claim(s) 1-8,10-19,67-73 and 83-86 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/22/05</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 6, 8, 67-68, 70, 72, 84 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashi et al. (US 4,602,473).

Hayashi et al. disclose a cap chute end subassembly comprising fluid manifold 41 with a plurality of apertures, fluid shoe 41a; frame; wiper 43; and pair of arms 42 for holding caps in place; see figure 9. The fluid manifold 41 and shoe 41a disperse inert gas towards the cap and into the opening/headspace of the containers 5 at a rate of about 600 bottles per minute.

3. Claims 67-68, 70, 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. (US 5,247,746).

Johnson et al. disclose a container sealing and gas flushing apparatus comprising fluid manifold 40; fluid shoe 50; for treating the container and caps before sealing at heater 60. Containers 16 are movable relative to the shoe 50. Shoe 50 has a plurality of apertures; see figures 1-3.

***Claim Rejections - 35 USC § 103***

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 5, 10-12, 14-19, 71, 73, 84, and 86 are rejected under 35 U.S.C.

103(a) as being unpatentable over Hayashi et al. (US 4,602,473) in view of Johnson et al. (US 5,247,746).

Hayashi et al. do not disclose a fluid shoe having a plurality of apertures, however Johnson et al disclose fluid nozzle 40 for dispensing fluids into a tray before sealing. It would have been obvious to one of ordinary skill in the art to use the nozzle as taught by Johnson et al. in the invention to Hayashi et al. in order to better disperse the fluid.

Regarding claim 3, Johnson describes using alternate gases and sources; see column 4, lines 3-45. It would have been obvious to one of ordinary skill in the art to supply different fluids as taught by Johnson et al. in the invention to Hayashi et al. in order to provide a non oxygenated headspace as desired.

Regarding claims 5 and 86, the subassemblies of Hayashi and Johnson are both deemed capable of dispersing a liquid fluid.

6. Claims 69 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 5,247,746) in view of Takehana et al. (US 4,888,936).

Johnson et al. do not directly disclose moving the fluid shoe with respect to the container, however Takehana et al. disclose a movable fluid dispensing shoe which

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dispenses a fluid to both containers and caps located in holding arms and then applied by wiper 9 (see figure 2).

It would have been obvious to one of ordinary skill in the art to use the teachings of Takehana in the invention to Johnson for adjusting the dispersion of gas while applying caps to bottles.

7. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al. (US 4,602,473) in view of Van Den Akker et al. (US 5,758,476).

The fluid shoe of Hayashi is not movable (rotatably or otherwise), however Van Den Akker et al. directly disclose a capper with rotatably mounted arms 30. Securing the positioning arms of Takehana et al. in a rotatable or movable configuration would have been obvious to one of ordinary skill in the art at the time the invention was made as taught by Van Den Akker et al. in the invention to Hayashi in order to secure the caps on the containers.

8. Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al. (US 4,602,473) in view of Johnson et al. (US 5,247,746) and further view of Van Den Akker et al. (US 5,758,476).

The fluid shoe of Hayashi is not movable (rotatably or otherwise), however Van Den Akker et al. directly disclose a capper with rotatably mounted arms 30. Securing the positioning arms of Takehana et al. in a rotatable or movable configuration would have been obvious to one of ordinary skill in the art at the time the invention was made as taught by Van Den Akker et al. in the modified invention to Hayashi in order to

secure the caps on the containers.

### ***Allowable Subject Matter***

9. Claims 20-25 and 87 are allowed.
10. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

11. As applicant noted in pages 10-11 of the arguments presented, Takehana et al. teaches injecting a non-oxidizing gas toward the headspace of a container with a cap immediately in position above; see figure 2. The nozzle is movably positioned and directed towards the opening at a 20 to 90 degree angle; see column 2, lines 50-56. Therefore the injection of the non-oxidizing gas is disclosed as being directed towards the interior of the caps as well as the opening of the containers. Similarly, the invention to Hayashi et al. discloses a nozzle directed toward the underside of a cap immediately before application on the container; see figure 9.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

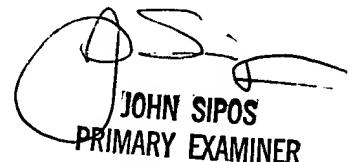
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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
JOHN SIPOS  
PRIMARY EXAMINER

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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